IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6291 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

OMPRAKASH SARDARILAL SHARMA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6291 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 18.6.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of dangerous activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of two criminal cases, which are filed under sections 66-B, 65-A-E, and 66(1)B, 65-A-E-, 81 and 116(1)B respectively of the Bombay Prohibition Act.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the detaining authority has not stated as to why it is necessary to detain the petitioner under the preventive detention even though the petitioner is in custody. He further submitted that the detaining authority has not even mentioned that the petitioner is likely to move any bail application and is likely to be released on bail. Except mentioning that the detenu is in judicial custody, nothing further is mentioned in the detention order as to why it is still necessary to detain the petitioner-detenu. For that purpose, learned advocate has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 5 and 6 observed as under.:

"4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of

the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

5. It is this reasoning which the learned advocate contended that the High Court should have held to be completely erroneous in the matter of being the basis of an order of detention.

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down."

#. Mr.Pancholi, learned AGP, however, submitted that when the petitioner is in police custody, naturally, there is no question of moving any bail application. Therefore, that material was not available with the detaining authority. He, therefore, tried to justify the detention order even though the petitioner is in custody. However, in my view, at least, the detaining authority was required to mention that the petitioner is likely to move the bail application and that he is likely to be released on bail and, at least, that part of the matter was required to be considered by the detaining authority in the detention order. Even there is no reference about the same in the detention order. In that view of the matter and in view of the aforestated judgment of the Apex Court, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 18.6.2002 is quashed and set aside. The detenu Omprakash Sardarilal Sharma is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)

(pathan)